SINGAPORE REPORTS

T. H. LTD. v. THE COMPTROLLER OF INCOME TAX

[C.A. (Wee Chong Jin C.J., Kulasekaram & Rajah JJ.) March 4, 1982]

[Singapore — Civil Appeal No. 10 of 1981]

Revenue Law — Income Tax — Claim for deduction of property tax payments by property development company — Change in accounting treatment of property tax payments — What is proper accounting treatment of property tax under "completed contracts" accounting system — Question of law for court to decide — Evidence of accountants relevant but not conclusive — Application of "ordinary principles of commercial accountancy" by court.

Revenue Law — Income Tax — Change in accounting method — Onus on party seeking change in accounting method to show good reasons for change.

The appellant company, which carried on business as a housing developer, had since its incorporation in 1970 kept its accounts on the "completed contract" cost accounting system. Under this system each development project is treated separately and revenue is recognised only when a project is completed. Development expenses and receipts from booking fees and progress payments are accumulated during the course of the project and carried forward in the balance sheet from year to year. It is only on completion of a project that all expenses attributable to that project are deducted from proceeds of sale and the net profits reported and assessed to tax.

For the accounting years 1970 to 1973 property tax incurred annually by the company in respect of its various properties was 'capitalised' in the balance sheet as part of the development expenditure. However for the accounting year 1974 the company changed its accounting treatment of the property tax payments by charging it to the debit side of the profit and loss account instead of capitalising it in the balance sheet as was done previously. By so doing the company sought to deduct immediately the property tax of $253,980 paid in the year 1974 against its taxable income for that year instead of waiting until the completion of the projects in respect of which the property tax was paid. The Comptroller disallowed this change and the company appealed to the Board of Review.

On appeal the company contended that it was against the ordinary principle of commercial accountancy to capitalise property tax payments as they did nothing to enhance the value of the properties in respect of which they were paid and were therefore not part of the cost of the company's stock-in-trade.

For the Comptroller, it was contended that it was in accordance with the ordinary principles of commercial accountancy to capitalise property tax payments and that as the company had applied this accounting treatment in the previous years the onus was on it to show that this treatment was wrong and should be changed.

In dismissing the appeal the Board held that: (i) the accumulation of property tax payments pending the completion of the projects in respect of which they were paid was not inconsistent with ordinary principles of commercial accountancy where the "completed contract" method of accounting is used; and (ii) where a particular method of accounting has been applied consistently in the past the onus was on the person seeking a change in method to prove that there was good reason for the change and that the company had not discharged this onus.

This decision was upheld by the High Court (see [1981] 2 M.L.J. 105) and the company appealed to the Court of Appeal.

Held, dismissing the appeal: (1) the real concern of the court was to ascertain the true profits of the company for the year of assessment 1975. That profit must be ascertained in accordance with the ordinary principles of commercial accounting, including the principle that stock-in-trade must be brought into account at the beginning and end of the year at its cost or market value whichever is the lower;

(2) although accountancy evidence is conclusive on the practice of accountants in the sense of the principles on which accountants act in practice it is for the court to decide what are the correct principles of the prevailing system of commercial accounting and to apply those principles in order to ascertain the true profit in the particular case;

(3) on the facts and the accountancy evidence before the Board the Board was correct in holding that the company had failed to discharge the onus on them to show that the treatment of the property tax payments in the accounts of the earlier years was wrong in law and in fact.

Cases referred to:-

(1) *Odeon Associated Theatres Ltd.* v. *Jones* 48 T.C. 257.

(2) *Whimster & Co.* v. *Commissioners of Inland Revenue* 12 T.C. 813, 823.

(3) *Duple Motor Bodies Ltd.* v. *Ostime* 39 T.C. 537.

(4) *BSC Footwear Ltd.* v. *Ridgway* 47 T.C. 495.

[The following cases were also cited in the argument before the court:- *Heather* v. *P.E. Consulting Group Ltd.* 48 T.C. 293; *Minister of Revenue* v. *Anaconda American Brass Ltd.* [1956] 1 All E.R. 20.]

CIVIL APPEAL.

Michael Patrick Nolan Q.C. (*Andrew Ang* with him for the appellant.

Miss Loo Lian Ee (State Counsel) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the Court): T. H. Ltd., the appellant company, was incorporated on April 15, 1970 and carries on the business of a housing developer. The company purchased several properties some of which it proceeded to develop and the rest it retained as its "land bank".

Since its incorporation the company in its accounts pertaining to its development projects used the "completed contract" method of accounting. Under this method revenue is recognised only when the project is completed or substantially completed, costs and progress payments received are accumulated during the course of the project, but profit is not reported until the project is substantially completed.

The company treated each development project separately and individual cost records are kept for each project. Development expenses are "capitalised" in the balance sheet and are accumulated and carried forward from year to year until the project is completed. Upon completion all expenses attributable to a particular project are deducted from proceeds of sale and the net profits, if any, are assessed to tax.

For the accounting years 1970 to 1973 property tax incurred and paid annually by the company in respect of all its properties was "capitalised" in the balance sheet as part of the cost of the company's properties and did not appear in the profit and loss account. During these accounting years the Comptroller of Income Tax, the respondent, did not object to the company's adoption of the "completed contract" methol of accounting and accepted the treatment of the property tax paid in the accounts as part of the cost of the properties and assessed the income tax payable on that basis.

However, for the accounting year 1974 the property tax paid amounting to $253,980 was for the

first time treated in the accounts as an item of expenditure and charged into the debit side of the profit and loss account and this amount was claimed by the company as an item of deductible expenditure under section 14(1) of the Income Tax Act (Cap. 141). The Comptroller disallowed this change in the treatment of the property tax payment and assessed the income tax payable accordingly. The company appealed to the Board of Review and the sole issue for determination related to the proper treatment in its accounts of property tax paid by the company in respect of its properties.

The Board heard accountancy evidence. In support of the company Mr. Coomber, a practising chartered accountant said that the expensing of the property tax paid under the profit and loss account of the company was not inconsistent with commercial accounting practice and with the "completed contract" method of accounting. He said that property tax should never be capitalised as it does nothing to enhance the value of the property in respect of which property tax is payable and that it would be incorrect to do so.

On the other hand in support of the Comptroller Mr. Yip a certified accountant with no commercial accounting experience but employed by the Inland Revenue Department for sixteen years said that the practice of capitalising property tax is in accordance with normal accounting practice in the case of a housing developer who adopts the "completed contract" method of accounting. He based his opinion on two publications. One is called "Statement of Standard Accounting Practice No. 9 Stocks and Works in Progress" (SSAP 9) published in May 1975 by the Institute of Chartered Accountants in England and Wales. The other is called "Exposure Draft 12, International Accounting Standard, Proposed Statement, Accounting for Construction Contracts" (Exposure Draft 12) issued for comment in December 1977 by the International Accounting Standards Committee.

The Board of Review held that "considering the evidence before us and the submissions of counsel, we are of the view that the accumulation of property tax payments by the company pending the completion of the projects in respect of which they are paid, is not inconsistent with ordinary principles of commercial accounting where the 'completed contract cost' method of accounting is adopted" and dismissed the company's appeal. The High Court on appeal upheld the Board's decision and the company now appeals.

In the present case we are concerned with ascertaining the true profits of the company for the year of assessment 1974. That and nothing else, apart from express statutory adjustments, is the subject of taxation in respect of a trade (see *Odeon Associated Theatres Ltd.* v. *Jones*[1]). That profit must be ascertained in accordance with the ordinary principles of commercial accounting, including the principle that stock-in-trade must be brought into account at the beginning and end of the year at its cost or market value whichever is the lower (see *Whimster & Co.* v. *The Commissioners of Inland Revenue*[2]).

Although accountancy evidence is conclusive on the practice of accountants in the sense of the principles on which accountants act in practice it is for the court to decide what are the correct principles of the prevailing system of commercial accounting and to apply those principles in order to ascertain the true profit in the particular case (see *Odeon Associated Theatres Ltd.* case, *supra*).

It was and is common ground in this case that the company's properties acquired for development (including those in its land bank) are its stock-in-trade and that the use of the completed contracts accounting method is in accordance with the ordinary principles of commercial accounting. The dispute in this case is whether the property tax paid by the company in respect of its properties is part of their cost. If it is not then the treatment of property tax paid in the 1974 accounts would be in accordance with the ordinary principles of ordinary accounting.

On behalf of the company it is submitted that in the present case the correct approach in law is to treat the property tax paid as a straightforward deductible expense and not as part of the cost of the properties as to do so accords with commonsense, with the accountancy evidence called by the company and with the principles applied in the case of *Duple Motor Bodies, Ltd.* v. *Ostime.*[3] In the *Duple* case Viscount Simonds said at page 567:

> "My Lords, a first principle of tax law is that the taxpayer, in ascertaining his profit, is entitled to debit his expenditure in the year of assessment unless it is excluded by section 137 of the Income Tax Act, 1952. And this is so although the whole of that expenditure may not bear fruit in that year."

Lord Reid said at page 571:

> "It has long been established that you are entitled to include in expenditure for the year all business expenses in that year not excluded by ... section 137 of the Income Tax Act, 1952, whether or not they can be attributed to the production of goods in that year. It matters not that certain expenditure may have proved abortive, or may have been spent solely with a view to production and profit in some future year and have no relation at all to production during the year of account.... Expenditure which it is permissible to include in the account is the whole general expenditure during the period, and it can only be said to have been spent to earn the profits of that year in the sense that it was all spent during that year to keep the business going and that, during that year, the business yielded the profit shown in the account. So the question is not what expenditure it is proper to leave in the account as attributable to goods sold during the year, but what expenditure it is proper in effect to exclude from the account by setting against it a figure representing stock-in-trade and work in progress. You must justify what you seek to exclude in this way as being properly attributable to, and properly represented by, those articles."

Relying on the *Duple* case the submission is that it is for the Comptroller to justify what he seeks to treat as costs as "being properly attributable to, and properly represented by, the stock" and that the evidence of Mr. Yip relied on by the Comptroller does not justify the treatment of property tax as cost.

The Comptroller's submission is that under section 80(3) of the Income Tax Act the onus is on the company to prove that the Comptroller's assessment is wrong and that the Board was justified on the evidence before it to find that the company had failed to discharge the onus on it to satisfy the Board that its former treatment of property tax was wrong and

not in accordance with the ordinary principles of commercial accounting. It is also submitted that the Board was correct in applying the consistency principle enunciated by Lord Reid in the *Duple* case and referred to with approval by Lord Morris of Borth-y-Gest in *B.S.C. Footwear Ltd.* v. *Ridgway*[4] at page 529:

"It was recognised by the Special Commissioners and in the judgments that good reason must be shown before giving endorsement to the action of the Crown in requiring a change of method of accountancy which the company for at least thirty years had adopted and which the Crown had not in that time challenged. Guidance was given as to this by my noble and learned friend Lord Reid in his speech in *Duple Motor Bodies Ltd.* v. *Ostime*. Following that guidance our concern must be to consider whether the method required by the Crown is better calculated than the method hitherto adopted by the company to reveal the full amount of the profits or gains of the company."

Earlier on in his speech Lord Morris at page 528 said:

"For many years the company have kept their accounts upon a particular basis. The Crown with appreciation of it have accepted it. The onus must be upon the Crown to show that the basis is unacceptable and should be changed. As between competing methods and practices of commercial accounting a mere preference for one should not give it, priority if the others are not open to objection. What must in the present case be considered is whether the basis which the company adopted was or was not a basis which would show 'the full amount of the profits or gains' of a particular year: see section 127 of the Income Tax Act, 1952."

The passage of Lord Reid's speech referred to reads as follows:

"It appears to me that we must begin at the other end and simply ask what, in all the circumstances of a particular business, is a figure which fairly represents the cost of stock-in-trade and work in progress. One thing clearly emerges as approved by the accountancy profession — whatever method is followed, it must be applied consistently. I accept that. So the real question is, what method best fits the circumstances of a particular business. And if a method has been applied consistently in the past, then it seems to follow that it should not be changed unless there is good reason for the change sufficient to outweigh any difficulties in the transitional year. There might, perhaps, be good reason for a change in a particular case in the other direction. But I can find nothing in the Case to justify such a change in the present case."

The Board found no good reason for the change in the treatment of the property tax for the accounting year 1974 and that on the accountancy evidence the company had failed to discharge the onus on them to show that the treatment of the property tax in the accounts for the earlier years was wrong in law and in fact. Those findings were accepted by the High Court and we have not been persuaded on the undisputed facts and on the accountancy evidence before the Board that the decision of the Board in dismissing the appeal of the company against the assessment was wrong. The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Lee & Lee.*

MING TEIK CO. PTE. LTD. v. KIAN CHEONG (BOXES) MFG. CO. PTE. LTD.

[O.C.J. (Kulasekaram J.) January 27, 1982]
[Singapore — Originating Summons No. 404 of 1981]

Land Law — Sale and Purchase Agreement — Time of the essence of Agreement — 30 days' notice for payment — Cheque drawn before but received after expiry date — Effect of.

By 3 identical agreements dated November 10, 1980, the respondents purchased from the applicant 3 properties. By virtue of the said agreements, on October 27, 1981 they lodged three Caveats against the properties.

Each of the three agreements stipulated, *inter alia*, the following:—

(i) "3(1). The purchase price shall be paid by the purchaser to the vendor by instalment and at the time following that is to say:—

(b) within fourteen (14) days after receipt by the purchaser of the vendor's notice in writing that the foundation work has been completed, a sum equal to ten (10) per cent of the purchase price;

(ii) "4. Time shall be of the essence of the contract in relation to all provisions of this Agreement and Shall relate to the payment of any instalment of the purchase price or any part thereof;

(iii) "5(3). If any of such unpaid instalments and interest remains unpaid for any period in excess of forty (40) days after its due date the vendor shall be entitled at its option on giving to the purchaser or his solicitors not less than thirty (30) days notice in writing to treat this agreement as having been repudiated by the purchaser and (unless in the meanwhile such unpaid instalment and interest shall have been paid) this agreement shall at the expiration of the said notice (and in this respect time shall be of the essence) be annulled. . . ."

On March 16, 1981, the applicants gave to the respondents notices under clause 3(b) of the agreements for payment of $32,518 due to each property. On May 15, 1981, the applicants gave and the respondents received notices under clause 5(3) of the agreement:

"We refer to our letter of March 16, 1981.

We are instructed to and we do hereby give your clients notice to pay the outstanding sum of $32,518 being the instalment under clause 3(1)(b) of the agreement plus interest within thirty (30) days from the date of receipt hereof, failing which our clients will exercise their rights under clause 5(3) of the agreement and treat the same as having been repudiated by your clients."

The respondents had drawn a cheque on June 12, 1981 for the required amount payable to the Tat Lee Bank and posted the cheque with a covering letter to the respondents' solicitors for transmission to the applicants' solicitors. The said letter was received by the respondents' solicitors on June 16, 1981. On the same day too they sent it to the applicants' solicitors who returned it as it was not received before the expiry of the notice in question.

The applicants contended that the agreement had been repudiated and sought to have the said caveats removed.

Held, allowing the application: as there was non-compliance with the notice by the respondents, the applicants were entitled, at the expiry of the notice, to treat the agreement as repudiated by the respondents.

Cases referred to:-

(1) *Rightside Properties Ltd.* v. *Gray* [1974] 2 All E.R. 1169.

(2) *Norman* v. *Rickitts* (1886) 3 T.L.R. 182.

ORIGINATING SUMMONS.

Cheng Tim Pin for the applicants.

L.A.J. Smith for the respondents.